



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS  
400 MARYLAND AVENUE, SW  
WASHINGTON, DC 20202-1475

REGION XI  
NORTH CAROLINA  
SOUTH CAROLINA  
VIRGINIA  
WASHINGTON, DC

October 8, 2021

*By Email/lcarter@fmarion.edu*

Dr. Luther F. Carter  
President  
Francis Marion University  
P.O. Box 100547  
Florence, SC 29502

RE: OCR Complaint No. 11-18-2248  
Resolution Letter

Dear Dr. Carter:

This letter is to advise you of the outcome of the complaint that the Office for Civil Rights (OCR) of the U.S. Department of Education received on XXXXX against Francis Marion University, which we will refer to as the University. The Complainant alleged that the University discriminated against her on the basis of disability. Specifically, the complaint alleged that the University failed to comply with the procedural requirements of Section 504 when assessing the Complainant's request for a disability-related accommodation during the XXXXX academic year.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the Department. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II) and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive Federal financial assistance from the Department. Because the University receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

During the investigation, OCR reviewed documents provided by the Complainant and the University and interviewed the Complainant and the Complainant's advocate. Before OCR completed its investigation, the University expressed a willingness to resolve the allegation pursuant to Section 302 of OCR's *Case Processing Manual*, which states that allegations may be resolved prior to OCR making a determination if the university expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR's investigation has identified concerns that can be addressed through a resolution agreement. The following is a summary of the evidence obtained by OCR during the investigation to date.

## **Background**

The Complainant is an individual with several disabilities, including XXXXX. During the XXXXX semester, the Complainant approached the University about the need for academic adjustments to address her disability-related needs with the support of an advocate. The Complainant provided a written request to the University's XXXXX seeking XXXXX as a testing accommodation and included documentation in support of her need for this particular accommodation from a XXXXX.

The University responded by letter on XXXXX that the University would not consider XXXXX for the Complainant as requested because the University did not consider this XXXXX. This letter also stated that XXXXX. On XXXXX, the Complainant, her advocate and the University toured various testing room options on the campus. All the options the University displayed and offered to the Complainant XXXXX.

On XXXXX, the Complainant's advocate wrote to the University in follow-up to the XXXXX meeting asserting that the University was mandating XXXXX without analyzing the individualized nature of the Complainant's disabilities. The Complainant's advocate maintained that without XXXXX, the Complainant could not test effectively due to her disabilities and would not be able to continue her education at the University. The Complainant's advocate then posed a series of questions to the University, including asking why XXXXX.

## **Legal Standard**

The Section 504 regulation, at 34 C.F.R. § 104.43(a), provides that a qualified person with a disability may not be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in any postsecondary aids, benefits, or services on the basis of disability. The regulation at § 104.44(a) requires a university to modify its academic requirements as necessary to ensure that such requirements do not discriminate or have the effect of discriminating on the basis of disability against a qualified student with a disability. The regulation at § 104.44(d) requires a university to ensure that no qualified individual with a disability is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination because of the absence of educational auxiliary aids for students with impaired sensory, manual, or speaking skills. OCR interprets the Title II regulation to require public universities to provide academic adjustments and auxiliary aids to the same extent as required under Section 504.

Universities may establish reasonable requirements and procedures for students to provide documentation of their disability and request academic adjustments and auxiliary aids and services. Students are responsible for obtaining disability documentation and for knowing and following the procedures established by the university. Once the student has provided adequate notice and documentation of his/her disability and the need for modifications due to the disability, the university must provide the student with appropriate academic adjustments and auxiliary aids and services that are necessary to afford the student an equal opportunity to participate in a school's program. However, the university is not required to make adjustments

or provide aids or services that would result in a fundamental alteration of the university's program or impose an undue burden.

In determining what modifications are appropriate for a student with a disability, the university should familiarize itself with the student's disability and documentation, explore potential modifications, and exercise professional judgment. The question of whether a university has to make modifications to its academic requirements or provide auxiliary aids is determined on a case-by-case basis. OCR generally does not substitute its judgment for that of qualified educators and professionals regarding modifications. Instead, OCR reviews relevant factual evidence to determine whether a university acted in a reasonable manner and whether it took appropriate steps consistent with Section 504 and Title II in making decisions regarding a student's eligibility for academic adjustments. Both Section 504 and Title II envision a meaningful and informed process with respect to the provision of modifications, e.g., through an interactive and collaborative process between the university and the student. If a university denies a request for a modification, it should clearly communicate the reasons for its decision to the student so that the student has a reasonable opportunity to respond and provide additional documentation that would address the university's objections.

Section 504 and Title II do not require a university to modify academic requirements that are essential to the instruction being pursued by the student or to any directly related licensing requirement. In reviewing an institution's determination that a specific standard or requirement is an essential program requirement that cannot be modified, OCR considers whether that requirement is educationally justifiable. The requirement should be essential to the educational purpose or objective of a program or class. OCR policy requires, among other factors, that decisions regarding essential requirements be made by a group of people who are trained, knowledgeable and experienced in the area; through a careful, thoughtful and rational review of the academic program and its requirements; and that the decision-makers consider a series of alternatives for the essential requirements, as well as whether the essential requirement in question can be modified for a specific student with a disability. OCR affords considerable deference to academic decisions made by post-secondary institutions, including what is or is not an essential program requirement.

### **Analysis**

Based on the information and documentation obtained thus far, OCR has concerns that the University did not follow proper procedures in denying the Complainant's request. While the University did interact with the Complainant and her advocate, offering several alternatives to the request, the University appears to have applied a blanket policy or practice of XXXXX for testing. As such, OCR is concerned that the University failed to engage in an individualized assessment of the Complainant's needs as it relates to XXXXX.

The University believed that XXXXX would fundamentally alter the nature of courses and undermine XXXXX. As it relayed to the Complainant, the University also wanted to avoid making individualized decisions regarding XXXXX and instead appears to have adopted a universal prohibition that would be applied consistently to all students, without regard to any particular student's disability-related needs.

While there may be courses for which XXXXX is a fundamental alteration, such a determination must be made on a case-by-case basis as part of an individualized assessment and in accordance with the Section 504 and Title II procedures for making decisions regarding essential requirements. Before OCR completed its investigation, including interviewing University personnel about how they assessed the Complainant's requested testing accommodations, the University agreed to resolve the allegation through a resolution agreement pursuant to Section 302 of OCR's *Case Processing Manual*.

On October 8, 2021, the University signed the enclosed Resolution Agreement which, when fully implemented, will address the allegation investigated. The provisions of the agreement are aligned with the allegation and the information obtained during OCR's investigation, and are consistent with applicable law and regulation. The agreement requires that the University create a policy that assesses the needs of students with disabilities requesting academic adjustments on an individualized basis and does not allow any blanket policy prohibiting adjustments to testing conditions, such as XXXXX, as an accommodation. It also requires that the University issue a letter to the Complainant informing her that if she chooses to take courses at the University in the future, the University will reconsider her disability accommodation requests on an individualized basis. Please review the enclosed agreement for further details. OCR will monitor the University's implementation of the agreement until the University has fulfilled the terms of the agreement.

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the University's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. OCR would like to make you aware that individuals who file complaints with OCR may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the University must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

We appreciate the University's cooperation in the resolution of this complaint. If you have any questions, please contact Megan Rok, the OCR attorney assigned to this complaint, at 202-245-8302 or [megan.rok@ed.gov](mailto:megan.rok@ed.gov).

Sincerely,

Dan Greenspahn  
Team Leader, Team I  
District of Columbia Office  
Office for Civil Rights

Enclosure

cc: Charlene Wages, CWages@fmarion.edu